IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

INCOME TAX APPEAL NO.687 OF 2004

Shantilal S. Jain
Prop : M/s.Quality Suppliers,
Shanti Villa, B-2, Model Town,
Gulmohar Cross Road No.7,
Juhu Scheme, Mumbai - 400 049. .. Appellant.

Versus

The Asstt. Commissioner of
Income tax, Circle 22(2),
Aayakar Bhavan, M.K. Road,
Mumbai - 400 020. .. Respondent.

Mr.S.G. Dalal for the appellant.

Mr.A.S. Rao for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 31ST JULY, 2007.

ORAL JUDGMENT (Per J.P. Devadhar, J.)

1. Heard.

2. In this Appeal filed under Section 260-A of the Income Tax Act, 1961, the appellant-assessee has formulated the following questions of law from the order of the Tribunal dated 10th November, 2003 passed in I.T.A. No.6488/Mum/97.

> 1. Whether in the facts and in the circumstances of the case, and in law, the Tribunal erred in treating the loan of Rs.25,000/- received from Shri D.K. Sanghvi as undisclosed income of the Appellant ?

2. Whether, in the facts and in the circumstances of the case, and in law, the Tribunal erred in treating the loan of Rs.25,000/- received from M/s.Aqua Trade as undisclosed income of the Appellant ?

3. The Appeal is admitted on the aforesaid questions and by consent of the parties, the appeal is taken up for final hearing.

4. The assessment year involved herein is A.Y. 1989-90.

5. In the assessment year in question, the Assessing Officer passed an assessment order under Section 143(3) of the Income Tax Act, 1961 making an addition of Rs.4,43,000/- on account of loans which were not proved and also by disallowing other expenses. On appeal filed by the assessee, the CIT (A) partly allowed the assessee's appeal on the basis of the remand report of the Assessing Officer. On further appeal filed by the assessee, the Tribunal partly allowed the appeal and confirmed the additions of Rs.25,000/- each received by the assessee from two cash creditors namely Shri D.K. Sanghvi and M/s.Aqua Trade mainly on the ground that the said two creditors were not assessed to income tax.

6. In our opinion, the fact that the two cash

creditors were not assessed to tax could not be the sole ground for sustaining the additions, especially when confirmation letter of D.K. Sanghvi was filed in the course of assessment proceedings. Veracity of the said confirmation letter has not been doubted. Moreover, in the present case, receipts as well as repayments have been made by account payee crossed cheques. It is not in dispute that the loans were raised through a broker and the assessee had volunteered to produce the broker and had given the name and income tax number of the broker.

7. In these circumstances, we are of the opinion that the Tribunal was not justified in sustaining the addition of Rs.25,000/- each aggregating to Rs.50,000/- on the ground that the cash creditors were not assessed to tax.

8. Accordingly, we hold that the additions of Rs.50,000/- in the hands of the assessee cannot be sustained. Both the questions are answered in favour of the assessee and against the revenue.

9. The Appeal is allowed in the aforesaid terms with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)